THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 8389 OF 2002

Date: 07.02.2006

Between:

Mr. K.Satyanarayana and others.

… Petitioners.

And

A.P. Genco, Vidyut Soudha rep.,by its Managing Director and another.

… Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 8389 OF 2002

ORDER:

Aggrieved by the action of the respondents in not regularizing the services of the petitioners as Junior Plant Attendants, with effect from 06.12.1996, and questioning the validity of several proceedings of the Board in this regard, the present writ petition is filed.

2. Facts, to the extent necessary for this writ petition, are that 1st respondent, erstwhile A.P. State Electricity Board, had recruited a large number of contract

labourers for carrying out maintenance works and other operations in its generating stations. In the year 1998, the 1st respondent regularized the services of several contract labourers, including persons who had ITI qualification and others who did not possess any qualifications. While the services of non-ITI contract labourers and the petitioners, who possessed qualification of 8th class pass with I.T.I., were regularized as Mazdoors, those having ITI qualifications with SSLC/SSC/10th class were regularized as Junior Plant Attendants with effect from 06-12-1996.

3. On being informed that in the earlier scheme, those who had completed 8th class were permitted to join ITI course directly and it was much later that the minimum qualification for admission into the ITI course was increased to 10th class and that it was in these circumstances that the petitioners had joined ITI after completing 8th class, that the qualification of ITI obtained by them was in no way inferior or different from the ITI qualification obtained by persons who had completed 10th class and that prescription of qualification of SSLC/SSC/10th Class pass, was arbitrary and in violation of Article 14 of the Constitution of India, the first respondent regularized the services of the petitioners with effect from 30.12.2000.

4. In this writ petition, the petitioners challenge the constitutional validity of several proceedings of the Board contending that they are similarly situated to persons who had passed 10th class and had obtained ITI and should therefore have been regularized, along with them, with effect from 06.12.1996.

Since several proceedings of the Board are under challenge, it is necessary to briefly refer to them. The 1st respondent had issued B.P.No. 1048 dated 23.09.1989 prescribing certain qualifications for appointment of contract labour, i.e.:-

i). A pass in SSC/SSLC/10th class

ii). A pass in ITI preferably with Electrician Trade or

iii). Vocation course in Electrical trade.

6. B.P.No. 1048 dated 23.09.1989 was modified, by memo dated 23.10.1990,

whereunder the qualification was changed to:-

i). a pass in S.S.L.C./S.S.C./10th Class

ii) a pass in ITI preferably with Electrician Trade

iii) Vocation course in Electrical Trade.

7. The qualifications prescribed in B.P.No. 1048 dated 23.09.1989 was confirmed in B.P.(P&G per) Ms.No. 369 dated 11.10.1990. The post of labourer was re-designated as Junior Plant Attendant in the 1990s. Several persons appointed on compassionate grounds were recruited as labourers/Junior Plant Attendants, even though they did not possess the prescribed qualifications. Even candidates who possessed only S.S.C/S.S.L.C./10th class, and did not possess ITI qualification, are said to have been appointed as Junior Plant Attendants.

9. Petitioners contend that treating them differently from those who had passed S.S.C./S.S.L.C./10th class is illegal and arbitrary, since such classification has no rational nexus to the object it seeks to achieve, namely recruitment and utilisation of the services of persons as Junior Plant Attendants. Petitioners would contend that the work done by Mazdoors, ITI qualified Junior Plant Attendants and those Junior Plant Attendants with both SSC and ITI qualification, is one and the same and that the petitioners, who also possess ITI qualification, should have been treated on par with and appointed along with the SSC/10th class pass I.T.I. qualified persons as Junior Plant Attendants. It is contended that no separate tasks are assigned to S.S.L.C./S.S.C/10th class with I.T.I. qualified Junior Plant Attendants and that the petitioners, who also possess ITI qualification, are being asked to perform the very same tasks. It is also contended that there is no difference in the scale of pay between them and therefore the action of the respondents in refusing to grant petitioners seniority and in not treating them on par with the SSLC/SSC/10th class and ITI qualified Junior Plant Attendants, with effect from 06.12.1996, is arbitrary and in violation of Article 14 of the Constitution of India. It is contended that the next promotion is from the post of Junior Plant Attendant to a Plant Attendant and since the petitioners' services were regularized, with effect from 30.12.2000, though they were similarly situated to the other Junior Plant Attendants, whose services

were regularized with effect from 06.12.1996, they would be deprived of the opportunity of being considered for promotion.

10. A counter-affidavit is filed on behalf of the respondents wherein it is stated that B.P.No. 1048 dated 23.09.1989 was issued prescribing the qualification of SSC and ITI (electrician) for direct recruitment to the post of Junior Plant Attendant and that, vide memo dated 23.10.1990 and B.P.NO. 369 dated 11.12.1990, it was decided that there should be no conversion after 23.03.1989, to the post of Junior Plant Attendant, from lower or equivalent categories, unless the incumbents possessed both SSC and ITI qualifications as prescribed in B.P.Ms.No. 1048 dated 23.09.1989. It is stated that, in Memo dated 01.12.2000, the Board decided to relax the qualification as a special case against the existing vacancies of Junior Plant Attendants as a one time measure. It is stated that, vide memo dated 27.08.2001, the revised seniority list of the Junior Plant Attendants was communicated and in memo dated 30.03.2002 orders were issued regularizing the services and commencing the probation of Junior Plant Attendants.

11. It is the case of the respondents that the petitioners, erstwhile contract labourers engaged against 33 abolished categories in VTPS, were absorbed as Mazdoors, with effect from 06.12.1996 with pecuniary benefits from 09.12.1997, based on the qualifications possessed by them. In terms of the orders issued in Memo dated 01.12.2000, the prescribed qualifications were relaxed as a special case. As a result thereof the petitioners were appointed, by transfer, as Junior Plant Attendants, vide memo dated 30.12.2000 and 08.01.2001. It is contended that since the petitioners did not possess the prescribed qualification of SSLC/SSC/10^{th} class they were not absorbed with effect from 06.12.1996, that their seniority should be reckoned only from the date of their joining duty and that the petitioners cannot compare their case with others, including those who were appointed on compassionate grounds. The allegation of discrimination is denied. It is stated that the qualification possessed by the petitioners is different from the qualification possessed by those contract labourers who were absorbed as Junior Plant Attendant with effect from 06.12.1996. While those contract labourers, who were absorbed as Junior Plant Attendants with effect from 06.12.1996, possessed the qualification of SSC with ITI, the petitioners had not passed SSC. It is contended that the petitioners are entitled to have

their seniority, as Junior Plant Attendants, reckoned only from the date they joined as Junior Plant Attendants and that their seniority, as communicated in Memo dated 27.08.2001, needs no revision.

12. Sri R.Raghunandan Rao, learned counsel for the petitioners, would contend that the very prescription of S.S.C. with ITI, of the qualification for being appointeed as Junior Plant Attendants, has no rational nexus with the object sought to be achieved and that the said classification is arbitrary and in violation of Articles 14 and 16 of the Constitution of India. Learned counsel would contend that the functions assigned and the tasks carried out by the petitioners, who possessed ITI certificate, but did not possess the qualification of S.S.L.C/S.S.C/10th class pass, were the same as that of the Junior Plant Attendants, who had passed S.S.L.C/S.S.C/10th class and possessed ITI certificate. Learned counsel would submit that while the task assigned, both to the petitioners and the Junior Plant Attendants, who had passed S.S.L.C/S.S.C/10th class with I.T.I. were the same and while the technical qualification of ITI (electrical) could be said to be a necessary qualification for carrying out the functions assigned to them, the prescription of S.S.L.C/S.S.C./10th class as a qualification is irrational and arbitrary. Learned counsel would submit that when the petitioners joined ITI Course, the minimum qualification prescribed for admission into the said course was a pass in the 8th class and it was much later that the entry qualification into the ITI course was enhanced and only candidates who had passed 10th class/S.S.C/S.S.L.C. examination were permitted to be admitted into the ITI course. Learned counsel would contend that it was on taking note of this fact, that the respondents had granted relaxation to the petitioners and had appointed them as Junior Plant Attendants, vide proceedings dated 01.12.2000. Learned Counsel would contend that since the respondents had themselves recognized this fact, there was no justification in denying the petitioners the benefit of being appointed as Junior Plant Attendants with effect from 06.12.1996, the date on which the S.S.C. with ITI certificate holders were appointed as Junior Plant Attendants.

13. In the written submissions, filed on behalf of the respondents, it is stated

that in B.P.Ms.No.1048 dated 23.9.1989, the qualification of SSC and ITI (Electrician) was prescribed for direct recruitment to the post of junior plant attendant and as per Memo dated 23.10.1990 and B.P.Ms.(P & G) No.369 dated 11.12.1990 no conversion as junior plant attendants from lower or equivalent category was to be allowed after 23.9.1989. While referring to the Memo dated 1.12.2000, wherein the petitioners were appointed as a special case in the existing vacancies of junior plant attendants on a one time basis duly relaxing the prescribed SSC/10th qualification, it is stated that since there is difference in the qualification possessed by the petitioners, they were appointed, by transfer, as junior plant attendants as a special case duly relaxing the qualification prescribed for the said post on a one time basis and that the seniority of junior plant attendants was finalized based on their dates of joining and with reference to the communal roster and that the seniority list was communicated on 27.8.2001. It is contended that the seniority list has become final and requires no revision. Reference is made to B.P.Ms.No.326 dated 14.3.1998 wereunder contract labour who possess the prescribed qualification were required to be appointed as junior plant attendants and those who did not possess the qualifications were required to be appointed as mazdoors. It is stated that the petitioners were appointed as mazdoors and it is only on the persuasion of the union that the post of mazdoor was directed to be converted as junior plant attendants to those candidates who possessed the I.T.I. qualification and accordingly the petitioners were converted as junior plant attendants. It is contended that having accepted the order of conversion, the petitioners are estopped/have acquiesced, from seeking such conversion with effect from 6.12.1996. It is contended that there is no classification in the category of junior plant attendants, and that the petitioners were given promotion as junior plant attendants, though they did not possess the requisite qualification, as a special case, on a one time basis and since they did not possess the prescribed qualifications to hold the post of plant attendants, they cannot claim such benefit retrospectively. It is contended that the petitioner did not have any legal right requiring interference under Article 226 of the Constitution of India.

14. In this context, reference may be made to the memo dated 01.12.2000 wherein, at paragraph 3, it is stated as under:

"However after careful consideration of the issue taking cognizance of the fact that earlier SSC was not a pre-requisite qualification for admission in I.T.I. and hence APGENCO, decided that the Mazdoors possessing I.T.I. qualification shall be appointed as J.P.As on appointment by transfer duly relaxing the prescribed SSC/10th qualification, as a special case against existing vacancies of J.P.As, on one time basis as per seniority, eligibility and suitability, subject to completion of their period of probation."

15. It is clear therefrom that the respondents took note of the fact that, earlier, SSC was not the minimum qualification for admission and it was in such circumstances that such Mazdoors, who possessed ITI qualification with 8th class, were appointed in the existing vacancies of Junior Plant Attendants duly relaxing the requirement of passing 10th class, as a one time measure. If the respondents found the petitioners eligible to be appointed as Junior Plant Attendants, vide proceedings dated 01.12.2000, it does not stand to reason as to why they were not treated on par with employees, possessing SSC with ITI, and their services regularized with effect from 06-12-1996.

16. Despite a specific challenge in this writ petition to the constitutional validity of various Board proceedings, prescribing 10th class/S.S.C/S.S.L.C. as a qualification for being appointed as Junior Plant Attendants, and as being in violation of Articles 14 and 16 of the Constitution of India, both the counter affidavit filed on behalf of the respondents and the written arguments filed in this regard, do not deal with this issue except for bare averment that the classification is not unconstitutional.

17. It is true that the burden is on the person who challenges the validity of a classification to establish that it is in violation of Articles 14 and 16 of the Constitution of India. (**State of J&K Vs. T.N. Khosa**). It is also well settled that prescription of educational qualification, for appointment to a post, is for the employer, in its wisdom, to decide and not for this Court to prescribe. (**Mohd. Shujat Ali Vs. Union of India**) Classification of employees, on the basis of educational qualifications, for appointment or promotion to a post, has necessarily to satisfy the requirements of Articles 14 and 16 of the Constitution of India. The test of permissible classification is two fold. One that the classification must be founded on an intelligible differentia, which distinguishes

persons grouped together from others who are left out of the group, and second that the differentia must have a rational connection with the objects sought to be achieved. Articles 14 and 16 do not insist upon a classification, which is scientifically perfect or logically complete. Classification would be justified unless it is patently arbitrary. The differentia required is that it must be real and it shall have substantial bearing, and must have a just and reasonable relation to the object sought to be achieved.

18. Petitioners have narrated in detail the fact that when they were admitted into the ITI Course, the minimum qualification prescribed for entry into the said course was a pass in 8th class and it was much later, after they had obtained ITI qualification, that the minimum qualification for admission into the ITI Course was enhanced to a pass in S.S.L.C/S.S.C./10th class. The proceedings dated 01.12.2000, whereby the petitioners were also appointed as Junior Plant Attendants, records this fact.

19. Since the petitioners, like those whose services were regularized as Junior Plant Attendants on 06.12.1996, possess I.T.I. qualification, the only question required to be examined, is as to whether the petitioners could be denied the benefit of being appointed as Junior Plant Attendants with effect from 06.12.1996 only on the ground that, they possessed 8th class while the prescribed qualification is a pass in S.S.L.C/S.S.C./10th class. Despite a specific plea in the writ petition that such a prescription is in violation of Articles 14 and 16 of the Constitution of India, the counter affidavit is silent as to the basis on which the qualification of S.S.L.C/S.S.C./10th class has been prescribed. The Counter affidavit is also silent as to how a candidate who has passed S.S.L.C/S.S.C./10th class with ITI qualification stands on a different or a higher footing, than a candidate who has passed 8th class and has obtained the IIT certificate, in discharging the functions and duties assigned to Junior Plant Attendants. Inasmuch as the post of Junior Plant Attendant in the Electricity Board requires technically qualified ITI (Electrical) candidates to effectively discharge the functions and duties attached to the said post, the prescription of additional qualification of 10th class pass has no rational nexus with the object of ensuring appointment of qualified personnel to the post of Junior Plant Attendants. Since the ITI certificate, which the petitioners also

possess, is the relevant qualification for appointment to the post of Junior Plant Attendant, it matters little whether the ITI certificate holder, had merely passed 8th class or the prescribed qualification of 10th class. The fortuitous circumstance of the minimum qualification for admission into the ITI course, (which was 8th class when the petitioner joined), being subsequently enhanced to 10th class, cannot disentitle the petitioners from being appointed to the post of Junior Plant Attendants, when the relevance of a 10th class pass, as against 8th class pass, in relation to the post of Junior Plant Attendant, is not explained by the respondents. Classification of persons who have passed 10th class with ITI, and excluding candidates who have passed 8th class with ITI, has no rational nexus to the object sought to be achieved of ensuing efficiency in service. It is also arbitrary, irrational and in violation of Articles 14 and 16 of the Constitution of India. It is well settled that even matters of executive policy must satisfy the requirements of Part III of the Constitution. While prescription of educational qualifications, for appointment to a post, are matters in the executive realm, they cannot however fall foul of Articles 14 and 16 of the Constitution of India.

20. Sri R. Raghunandan Rao, learned counsel for the petitioners, would submit that except for the petitioners there are no other candidates working in the respondent-Corporation, who possess the qualification of 8th class pass with ITI and that by prescribing the minimum qualifications of S.S.L.C/S.S.C/10th class, in addition to ITI, the petitioners alone have been unfairly discriminated against. I find considerable force in this submission. Since the object of prescribing S.S.L.C/S.S.C/10th class has no rational nexus, to the object sought to be achieved which can only be to ensure that technically qualified candidates are appointed as Junior Plant Attendants to effectively discharge the tasks and functions attached to the said post, the petitioners must be held to have been unfairly discriminated against and to be entitled for being similarly treated as those who possess S.S.L.C/S.S.C./10th class with ITI qualification. Since the petitioners have been appointed as Junior Plant Attendants, in relaxation of the rules, with effect from 01.12.2000, as they were found qualified to discharge the functions attached to the said post, there is no justification in denying them the same benefit with effect from 06.12.1996. The petitioners are

entitled for parity of treatment and must be declared to have been appointed as Junior Plant Attendants with effect from 06.12.1996 on par with the S.S.L.C/S.S.C./10th class and ITI qualified Junior Plant Attendants. The plea of waiver or estoppel urged by Smt. Urmila, learned Standing Counsel for the respondents, cannot be accepted. Learned Standing Counsel would contend that since the petitioners had obtained the benefit of regularization of their services as Junior Plant Attendants, vide memo dated 01-12-2000, and had joined in the said posts pursuant thereto they were estopped from seeking parity with the S.S.L.C/SSC/10th class and ITI qualified Junior Plant Attendants or to seek regularization with effect from 06-12-1996. It is well settled that fundamental rights, under Article 14 and 16 of the Constitution of India, cannot be waived. The plea of estoppel or waiver has no application to cases where fundamental rights are violated. (**OLGA TELLIS vs. BOMBAY MUNICIPAL CORPORATION**).

21. The next question is as to whether the petitioners are entitled for payment of differential wages with effect from 06.12.1996.

22. The fact, that the present writ petition has been filed in 2002, more than five years after the S.S.L.C/S.S.C./10th class ITI qualified candidates were appointed as Junior Plant Attendants and nearly a year and half after the petitioners were regularized as Junior Plant Attendants, vide proceedings dated 01.12.2000, cannot be ignored. In view of the delay in approaching this Court, ends of justice would be met, if the petitioners were denied arrears of differential wages. The respondents are directed to regularize the services of the petitioners, as Junior Plant Attendants, with effect from 06.12.1996. While the petitioners are not entitled for payment of arrears of differential wages, they shall be entitled for notional increments and for consequential fitment in the appropriate pay scales.

23. The writ petition is accordingly allowed. There shall however be no order as to costs.

Date: .02.2006.

_____

RAMESH RANGANATHAN, J

MRKR